



Appeal Decision

Site visit made on 10 January 2020

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 15 January 2020

Appeal Ref: APP/L5810/W/19/3237929

136A Buckingham Road, Hampton TW12 3JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Michael Curran against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 19/0548/FUL, dated 18 February 2019, was refused by notice dated 25 July 2019.
 - The development proposed is the renovation/amendment to an existing dwelling and the construction of 4 No new detached properties.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Michael Curran against the Council of the London Borough of Richmond-upon-Thames. This application is the subject of a separate Decision.

Main Issues

2. The main issues are (i) the effect of the proposal upon affordable housing provision in the area; (ii) whether each of the dwellings would have acceptable private outside amenity space; (iii) the effect of the development on the living conditions of the occupiers of Nos 4A and 5A Haslemere Close in respect of outlook, and the occupiers of the proposed dwellings in terms of privacy; (iv) the effect of the proposal on the character and appearance of the area including the loss of trees; (v) the effect of the development on on-street car parking demand and the free flow of traffic; (vi) whether, taking into account on-site turning and manoeuvring space, the proposed access would be acceptable in highway and pedestrian safety terms, and (vii) the effect of the development in terms of loss of trees and biodiversity.

Reasons

Affordable housing

3. Paragraph 63 of the National Planning Policy Framework 2019 (the Framework) states that the '*provision of affordable housing should not be sought for residential development that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units*

or fewer'. The appeal site is not in a designated rural area and the proposal does not constitute major development.

4. Paragraph 9.3.1 of the reasoned justification to policy LP 36 of the adopted London Borough of Richmond upon Thames Local Plan July 2018 (LP) states that the Borough has one of the highest average house prices in the UK, and a continuing need for affordable housing, particularly for family homes. In the period from 2014 to 2033 a net deficit of 964 affordable homes per annum is identified in the Borough SHMA, demonstrating the need for affordable homes remains substantial and justifies the continued policy approach. In this context, it states that small sites make a significant contribution to housing supply and the cumulative impact of these sites should contribute to affordable housing provision, justified by the evidence base and local circumstances.
5. Given the above, policy LP36 of the LP requires an affordable housing financial contribution based on the number of dwellings proposed on the site. The appellant has not disputed the need to contribute towards affordable housing and raises no comments in respect of paragraph 63 of the Framework.
6. The statutory position is that planning applications have to be determined in accordance with the development plan unless material considerations indicate otherwise. I have therefore had regard to paragraph 63 of the Framework as a material planning consideration and I give it great weight. However, I find that this does not outweigh the substantial weight which I attach to the local evidence of affordable housing need and hence to policy LP 36 of the LP. As I have no mechanism before me to secure a financial contribution towards affordable housing (i.e. a Section 106 legal agreement), and as I am dismissing the appeal for other reasons, there is no benefit of pursuing this matter any further. Therefore, I conclude that the proposal does not accord with policy LP 36 of the LP and this therefore weighs against allowing the appeal.

Private outside amenity space

7. There is no dispute between the main parties that the amount of proposed outside amenity space for each dwelling is acceptable and in that regard the proposal accords with minimum size requirements as outlined in the Council's Residential Development Standards SPD. The point of contention relates to whether the outside amenity space is private, useable and functional taking into such requirements as detailed in Policy LP 35 of the LP.
8. Some of the dwellings, in particular those for plot Nos 3, 4 and 5, would be positioned in very close proximity to the boundaries of the site. Consequently, this would result in very narrow and irregularly shaped amenity spaces. I am not persuaded that such spaces would be of any reasonable functional use.
9. The main garden area for Plot No 1 would not be private given the close relationship of the front windows of Plot No 3 and indeed the nearby communal pathway. Furthermore, there would be unacceptable overlooking of the side garden for Plot No 3 from the first-floor rear windows of the dwelling proposed for Plot No 2. Whilst ground floor overlooking may be capable of being mitigated by means of say the erection of a fence, hedge or other planting, I do not consider that this would be an acceptable solution in all respects. In particular, this would have the effect of creating an even more cramped/compact residential environment if that were to take place for the garden area of Plot No 1.

10. In addition to the above, I note that the proposed garden area for Plot No 3 would include part of the canopy of the oak tree which is in the grounds of No 5A Haslemere Close and which is the subject of a Tree Preservation Order. I agree with the Council that this would have the effect of blocking a significant amount of sunlight into this part of the garden at certain times. To this extent, this part of the proposed garden would not be adequate or useable at all times of the day/year. Indeed, and to this extent, it is likely that occupiers of the proposed dwelling would place some pressure on the local planning authority to permit works to the protected tree which could, in turn, unacceptably dilute its positive contribution to the amenity of the area.
11. I do not consider that there would be any significant overlooking of the main garden area of Plot No 2 from the side elevation windows of the altered host dwelling. Any windows in the roofspace of Plot No 2 could be obscure glazed and non-opening at a specified height. Furthermore, the ground floor non-habitable room windows to the altered host property could be adequately screened by means of the erection of some form of boundary treatment which could be secured by planning condition. In this respect, I do not therefore agree with the Council that this part of the proposal would fail to accord with Policy LP 35 of the LP.
12. Whilst some of the proposed properties would be acceptable in overall amenity space terms, when the proposal is considered as a whole, and for the collective reasons outlined above, I conclude that the development would not fully accord with the detailed amenity space requirements of Policy LP 35 of the LP.

Living conditions – outlook and privacy

13. I have already concluded above that there would be some unacceptable overlooking of the garden areas of proposed Plot Nos 1 and 3. Whilst there may be some acceptable oblique overlooking of some of the other proposed outside amenity spaces/windows within the appeal site, other than in respect of Plot Nos 1 and 3, the main/substantive garden areas for the dwellings could be made private by means of a combination of landscaping and/or fencing set well back from front elevations. In addition, specified windows could be fitted with opaque glass and be non-openable as suggested by the appellant.
14. Notwithstanding the above, and as part of my site visit, I was able to consider the effect of the development on the living conditions of the occupiers of Nos 4A and 5A Haslemere Close. Given the position, scale and orientation of the dwellings for Plot Nos 2 and 3, I do not consider that the development would cause material harm to the occupiers of these properties from a loss of sunlight or daylight point of view.
15. Unlike a number of other properties in the area (particularly properties on Buckingham Road), the gardens associated with Nos 4A and 5A Haslemere Close are relatively wide, but not long. Plot Nos 2 and 3 would include dwellings which would be positioned in very close proximity to the boundaries of the aforementioned properties, albeit that I do acknowledge that the house for Plot No 3 would be at an oblique angle.
16. I note that the appellant has opted for dwellings which include accommodation in the roofspace: in this respect the dwellings could reasonably be considered to be one and half storeys in height. Nonetheless, the dwellings would be much higher than those at Nos 4A and 5A Haslemere Close, which are true

bungalows. Owing to the close position and the scale/massing of the proposed dwellings at Plot Nos 2 and 3, they would have an unacceptably dominating and enclosing impact when viewed by the occupiers of these neighbouring residential properties from rear/side facing windows and gardens areas.

17. I accept that there is some existing boundary landscaping which to some extent would soften the impact of the development, particularly when all the trees are in leaf. However, the rear boundary of No 4A Haslemere Close does not include planting along its full length and so the appeal site is visible from the principal windows of this property. Even accounting for existing boundary planting (both on the site and in the grounds of the neighbouring properties), the height and proximity of the proposed dwellings for Plot Nos 2 and 3 would be such that they would be very conspicuous and dominant when viewed by the occupiers of neighbouring residents. Furthermore, I would add that I cannot be certain that the existing boundary planting within the gardens of No 4A and 5A Haslemere Close would endure forever.
18. For the reasons outlined above, I conclude that significant harm would be caused to the occupiers of Nos 4A and 5A Haslemere Close in respect of loss of outlook. Furthermore, and whilst I am satisfied that oblique overlooking between the windows of the respective proposed dwellings on the site would be acceptable, there would nonetheless be unacceptable levels of privacy for the occupiers of the dwellings on Plot Nos 1 and 3 in respect of use of the proposed main/substantive garden areas. For these reasons, the proposal would not accord with the amenity aims of Policies LP 8 and LP 39 of the LP; the Council's Residential Standards SPD 2010; the Council's Small and Medium Housing Sites SPD 2006 and paragraph 127(f) of the National Planning Policy Framework 2019 (the Framework).

Character and appearance

19. I acknowledge some of the concerns raised by other interested parties about setting a precedent for the erection of other dwellings in backland garden locations. I note that most of the dwellings on Buckingham Road have long and essentially undeveloped back gardens. Nonetheless, the appeal site immediately adjoins development at Haslemere Close and the host property is somewhat unusual in so far that it is set well back from the main road. In this context, I am satisfied that in principle some low level dwellings on the site would be acceptable in principle.
20. Notwithstanding the above, the dwellings on Plot Nos 1 and 2 would be in very close proximity to one another. Furthermore, the dwellings on Plot Nos 2, 3, 4 and 5 would be positioned tight up against existing site boundaries. Overall, the residential environment would appear cramped and would fail to reflect the overall sense of spaciousness that exists between and around existing dwellings in the immediate locality.
21. The above harm would be compounded by the fact that the frontage of the site would include car parking spaces grouped in a haphazard manner. Furthermore, a number of trees would be lost to facilitate development on the site. There would be limited compensatory planting and the frontage of the site would include a lot of hard landscaping. Whilst ordinarily it may be possible to secure additional planting by means of the imposition of a planning condition, in this case such planting would potentially have further adverse effects in terms of useable and functional outside amenity spaces and may

serve to create a dark and more oppressive residential environment for residents.

22. Whilst I accept that the dwellings would not be as high as those that exist on Buckingham Road, their scale and bulk would not be comparable to Nos 4A and 5A Haslemere Close. Given the close proximity of the Plot No 2 and 3 dwellings to these neighbouring properties, and their overall height (about 6.5 metres) and bulk, I do not consider that the proposal would be acceptable in character and appearance terms. Plot No 3 in particular would be seen in the context of the low level bungalows on Haslemere Close and in this regard the development would appear unacceptably dominant and out of place. In this respect, I find conflict with Policy LP 39 of the LP which states that *"development on backgarden sites must be more intimate in scale and lower than frontage properties"*.
23. For the collective reasons outlined above, I conclude that significant harm would be caused to the character and appearance of the area. Therefore, the proposal would not accord with the design, character and appearance requirements of Policies LP 1, LP 16 and LP 39 of the LP; the Council's Design Quality SPD 2006; the Council's Small and Medium Housing Sites SPD 2006 and paragraph 127 of the Framework. In reaching this view, I have taken into account the appellant's reference to a planning permission for housing development in a town centre location which is claimed to be of higher density. However, this does not alter my conclusion on this main issue in so far that the environmental conditions are/were different for that site and, in any event, I have determined this appeal on its individual planning merits.

Car parking and the free flow of traffic

24. The proposal includes six on site car parking spaces and a delivery/service space to the side of the Plot No 1 dwelling. In numerical terms, this level of car parking provision would fail to accord with the on-site car parking requirements as outlined in policy LP 45 and appendix 3 of the LP which indicates two spaces per dwelling based on the undisputed PTAL. Furthermore, the appellant accepts that two of the six spaces would be 'constrained'. I do not disagree in respect of passing and manoeuvring space.
25. In order to justify a departure from the aforementioned car parking requirements, the appellant has completed a car parking survey to see if there is parking stress in nearby streets and, if not, whether it would be appropriate to park vehicles off site. I have no reason to disagree with the views expressed by the Council that between 00.30 hrs and 05.30 hours the proposal would not lead to parking stress on Buckingham Road or beyond.
26. Notwithstanding the above, I do note the significant number of representations received from the local community who assert that whilst on-street car parking surveys were carried out by the appellant in July (i.e. up to or shortly after 05.00 hours), there is a particular problem with on-street car parking/congestion during school opening times when children are dropped off and picked up.
27. The evidence before me suggests that there are two schools within the area. Some of the representations refer also to weekly refuse collections (i.e. on a Thursday) and that at school drop off and pick up times cars park on both sides of the road making it difficult for vehicles to pass. My site visit was on a

Friday, but, in any event, I did notice that there was some car parking on both sides of the road. I continue to deal with the aforementioned matters later on in this decision, but in terms of whether there is capacity on Buckingham Road to accommodate some additional car parking associated with the proposal, the evidence would indicate that there is.

28. For the above collective reasons, I conclude that the failure to accord with the quantitative car parking requirements of policy LP 45 of the LP would in this case be acceptable and outweighed by the fact that the proposal would not in itself lead to any significant car parking stress issues.

Access and highway safety

29. Given the limitations afforded by the site in terms of on-site manoeuvring and turning space, it would not be possible for a refuse vehicle to both enter and leave the site in forward gear. It would be necessary for refuse vehicles to reverse into the site which would be for a distance significantly in excess of 12 metres to reach the proposed bin store. This would be at odds with the Council's Refuse and Storage Requirements SPD 2015 (SPD) which states that *"waste collection operatives should not be required to carry waste sacks, dustbins or move wheeled bins more than 20 metres in total...and British Standard (BS 5906: 2005) recommends a maximum reversing distance for vehicles of 12m"*.
30. The SPD goes on to say that *"whatever the distance agreed, any reversing routes should be straight and free from obstacles and visual obstructions"*. In this case, refuse vehicles would need to reverse along the internal access where there would be a number of parked vehicles. There would be similar problems in terms of a fire tender being able to enter, turn and exit the site in forward gear.
31. The appellant contends that the above concerns could be addressed by means of controlling the location of the bin store. This may be appropriate in some circumstances, but in this case the amount of land available to provide a bin store is limited given the amount of development proposed on the site as well as the position of the proposed car parking spaces. This is a matter that therefore needs to be considered as part of the overall layout and design of the site.
32. I do accept that refuse collections would not take place each day. However, the proposed collections would still have the potential to lead to some unacceptable highway safety impacts. The evidence before me does indicate that Buckingham Road can be quite busy, particularly during school pick up and drop off times, and I have no doubt that reversing refuse vehicles would have the effect of unacceptably interrupting the flow of traffic on this highway. Furthermore, I have concerns about such manoeuvring from the point of view of the safety of pedestrians (including school children) using the pavement/crossing near to the site access.
33. I recognise that the appellant's swept path analysis drawing does show that in respect of most of the car parking spaces, cars would be able to enter and leave the site in forward gear. However, this would be problematic for larger vehicles and if visitors to the site did not park in the allocated spaces. In this context, there is scope for some on-site manoeuvring conflict between both cars and refuse vehicles. This in turn would mean that some drivers turning

into the site would have to wait on Buckingham Road. Therefore, this also has the potential to unacceptably interrupt the flow of traffic on the highway outside of the site.

34. For the collective reasons outlined above, I conclude that the proposal would cause unacceptable harm to highway safety and the free flow of traffic on Buckingham Road. Therefore, the proposal would not accord with the highway safety aims of policies LP 24, LP 44 and LP 45 of the LP or the refuse collection requirements of the SPD.

Biodiversity and loss of trees

35. As part of the appeal, the appellant has submitted a Preliminary Ecological Appraisal (PEA) prepared by Brindle and Green Ecological Consultants dated August 2019. The Council refers to some inadequacies in terms of the quality and accuracy of the report. The PEA states that there is some (albeit low) bat roost potential on the site and hence I agree with the Council that one emergent survey needs to be carried out. It is suggested in the PEA that a bat emergent survey would be carried out in respect of Building No 1, but such a survey is not before me. This information is needed now given that demolition works are proposed and so that any possible mitigation measures can be considered at this stage.
36. In the character and appearance main issue above, I have already concluded that some harm would be caused to the verdant character and appearance of the area in so far that the proposal includes a lot of hard standing area, owing to the fact that a significant number of trees would be lost and as a reasonable amount of compensatory planting is not proposed. Indeed, policy LP16 of the LP states that "*where practicable, an appropriate replacement for any tree that is felled*". I note that it is proposed to erect some bird boxes on the site, as per the recommendations in the PEA, and in this respect it would partly mitigate against the loss of tree habitat. However, the proposal as submitted would lead to a cramped and out of keeping development and I do not doubt that with less development on the site there would also be greater potential for increased tree/other planting.
37. For the above reasons, I cannot conclude that the proposal, including the loss of trees, would not lead to harm to biodiversity interests. To this extent, the proposal would conflict with the biodiversity requirements of Policies LP 15 and LP 39 of the LP and the Framework, and the tree and design requirements of policies LP 1 and LP 16 of the LP.

Other Matters

38. The proposal would seek to boost the supply of dwellings in the area. There would therefore be some social and economic benefits associated with allowing the appeal. However, in these respects the contribution from only an additional net four dwellings would be relatively limited. None of the identified benefits would outweigh or overcome my overall conclusion on the main issues.

Planning Balance and Conclusion

39. I have found that the proposal would be acceptable in so far that it would not lead to significant car parking stress/demand on Buckingham Road or nearby streets. However, this is a matter of neutral consequence in the overall balance.

40. Significant harm would be caused to the character and appearance of the area and to the living conditions of the occupiers of Nos 4A and 5A Haslemere Close in respect of outlook, and to the occupiers of some of the proposed dwellings in terms of outside amenity space and privacy. Furthermore, unacceptable harm would be caused to pedestrian and highway safety and to the free flow of traffic, and insufficient information has been submitted by which to assess the proposal against biodiversity considerations. In addition, there is no mechanism in place by which to secure affordable housing provision. These are matters of overriding concern and I therefore conclude that when the proposal is considered as a whole the appeal should be dismissed.

D Hartley

INSPECTOR